



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Labor TITLE-SERIES: 42-36  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 42-36 Registration of Weighing and Measuring Devices Used by Businesses in Commercial Transactions

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: §§47-1-3(c) and 47-1-21(d)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §47-1-3(c) authorizes the Commissioner to propose rules for the enforcement of the Weights and Measures Act, W. Va. Code §47-1-1 et seq, including the authority to propose rules for the implementation and enforcement of the registration of weighing and measuring devices used by businesses in commercial transactions.

The rule includes the following sections: definitions; the required registration of weighing or measuring devices used in commercial transactions; information required in the registration application and registration renewal; and penalties if a business fails to register its weighing and measuring devices or has expired certificates of registration.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? Yes

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? Yes

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/15/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/17/2017

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/A

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The purpose of the rule is to comply with the Division's responsibilities for implementing and enforcing the registration of weighing and measuring devices used by businesses in commercial transactions.

The only proposed change to the rule is a five-year extension of the sunset date.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Pursuant to W. Va. Code §29A-3-19(e), the Division is affirmatively seeking renewal of the rule, which was previously set to expire on March 23, 2023.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The rule will not have an economic impact on the revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The rule will not have an economic impact on special revenue accounts.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The rule will not have an economic impact on the State or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

**Yes**

**Mitchell E Woodrum -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 42  
LEGISLATIVE RULE  
DIVISION OF LABOR

SERIES 36  
REGISTRATION OF WEIGHING AND MEASURING DEVICES  
USED BY BUSINESSES IN COMMERCIAL TRANSACTIONS

**§42-36-1. General.**

1.1. Scope. -- This rule governs the registration of weighing and measuring devices used by businesses in commercial transactions, and the issuance of certificates of device registration.

1.2. Authority. -- W. Va. Code §§47-1-3(c) and 47-1-21(d).

1.3. Filing Date. -- ~~March 23, 2018.~~

1.4. Effective Date. -- ~~March 30, 2018.~~

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect ~~on March 30, 2023~~  
upon the expiration five years from its effective date.

**§42-36-2. Application and Enforcement.**

2.1. Application. This rule applies to all businesses that use weighing and measuring devices in commercial transactions with the public.

2.2. Enforcement. The enforcement of this legislative rule is vested in the West Virginia Division of Labor.

**§42-36-3. Definitions.**

3.1. "Certificate of device registration" means the document issued by the Division to a business upon receipt of a complete application.

3.2. "Commissioner" means the Commissioner of the Division of Labor and his or her authorized representatives.

3.3. "Complete application" means an application that includes all the information required by the Commissioner on the form supplied by the Division.

3.4. "Device" means any instrument, apparatus or piece of equipment that is used in commercial transactions to weigh or measure goods or products for sale to the public.

3.5. "Division" means the West Virginia Division of Labor.

**§42-36-4. Device Registration Required.**

A business that uses weighing or measuring devices in commercial transactions for the sale of goods or products to the public shall register each device with the Division prior to placing the device in service and annually thereafter.

**§42-36-5. Device Registration Application; Renewal.**

5.1. A business that uses weighing or measuring devices in commercial transactions shall submit a written application and provide all information as the Commissioner may require on a form supplied by the Division.

5.2. If a business operates in more than one commercial location, the business shall submit a separate device registration application for each commercial location where weighing or measuring devices are used in commercial transactions.

5.3. Upon receipt of a complete application, the Commissioner shall issue a certificate of device registration for each device registered with the Division.

5.4. A certificate of device registration shall expire one year from the date of issuance.

5.5. The Division shall provide a renewal application to each business that has registered weighing and measuring devices at least 30 days prior to the certificate of device registration's expiration date.

**§42-36-6. Failure to Register; Expired Certificate of Device Registration.**

A business that fails to register its weighing and measuring devices that are used in commercial transactions for the sale of goods or products to the public or has an expired certificate of device registration may be subject to civil penalties as set forth in W. Va. Code §47-1-22.